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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY. 'S DOCKET: LUCONI=1

In re Application of:)	Art Unit: 1654
)	
LUCONI et al.)	Examiner: L. N. Leary
)	
Appln. No.: 10/048,013)	Washington, D.C.
)	
Filed: January 28, 2002)	January 6, 2004
)	
For: PROCESS FOR THE IMPROVEMENT OF SPERM...)	Confirmation No.: 1351
)	

PETITION TO VACATE HOLDING OF ABANDONMENT¹

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Sir:

Applicant is in receipt of the Notice of Abandonment, mailed December 12, 2003, which erroneously states that the application is abandoned because of applicant's failure to file a response within the time period established by the Office Action mailed June 3, 2003.

It is respectfully requested that such Notice of Abandonment be vacated as being erroneous and that the present application be reinstated.

¹ If a fee must be charged, please charge same to Deposit Account No. 02-4035, and then refund said fee as the holding of abandonment is erroneous and is entirely the fault of the PTO.

THE FACTS

Applicant timely and properly responded within the time period established by the Office Action dated by timely filing a Response on August 21, 2003.

As evidence that such Response was timely and properly filed on August 21, 2003, attached hereto is a xerographic copy of the return postcard date-stamped by the PTO Mail Room as having been timely received by the PTO on August 21, 2003.

As it appears that the Response filed on August 21, 2003, has been lost by and in the PTO, attached hereto is a duplicate copy of the Response (entitled "Amendment") dated August 21, 2003, freshly re-signed and related papers. **No further fees are required at this time.**

REMARKS

In view of the above evidence, it is clear that a Reply was timely and properly filed within the time period established by the Office Action mailed on and that the Notice of Abandonment has been issued in error. Indeed, the postcard by itself should be sufficient, as MPEP Section 503 states:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt of the PTO of all

items listed there on the date stamped thereon by
the PTO.

It accordingly requested that the Notice of Abandonment
be vacated and the present application be reinstated.

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

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